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263 NLRB No. 90

D--9151
Bronx, NY

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

FENETROL WINDOW MANUFACTURERS,
INC. f/k/a FENETROL, INC.,
A SUBSIDIARY OF YONKERS PLATE
GLASS CO.

and

Case 2--CA--16827

SHOPMEN'S LOCAL UNION NO. 455,
INTERNATIONAL ASSOCIATION OF
BRIDGE, STRUCTURAL AND
ORNAMENTAL IRON WORKERS, AFL--CIO

SUPPLEMENTAL DECISION AND ORDER

On August 27, 1980, the National Labor Relations Board issued a Decision and Order ¹ in the above-entitled proceeding in which the Board, inter alia, ordered Fenetrol, Inc., a subsidiary of Yonkers Plate Glass Co., herein called the Respondent, to offer reinstatement to and to make whole Eddie Ortiz and Winseth Green, and to make whole Percival Huggins, Juan Feliciano, David Huertas, Richard Brice, Hector Delgado, William Dove, A. Perez, Richard Bryant, Adalberto Cardo, and Santiago Perez, for any loss of earnings they may have suffered by reason of the Respondent's discrimination against them. On June 11, 1981, the United States Court of Appeals for the Second Circuit entered its judgment enforcing the Board's Order. A controversy having arisen over the amount of backpay due under the Board's Order, as enforced by the

¹ 251 NLRB 846.

court, the Regional Director for Region 2, on January 29, 1982, issued and duly served a backpay specification and notice of hearing, alleging the amount of backpay due the discriminatees under the Board's Order, further alleging that the Respondent and Fenetrol Window Manufacturers, Inc., as an alter ego of or successor to the Respondent, were jointly and severally liable for this backpay amount, and notifying the Respondent and Fenetrol Window that they should file a timely answer complying with the Board's Rules and Regulations. No answer has been filed.

Thereafter, on May 21, 1982, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment in accordance with the backpay specification and a petition in support thereof. Subsequently, on May 27, 1982, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's motion should not be granted. No response has been filed to the Notice To Show Cause.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

Section 102.54 of the Board's Rules and Regulations, Series 8, as amended, provides, in pertinent part, as follows:

(a) . . . The respondent shall, within 15 days from the service of the specification, if any, file an answer thereto

* * * * *

(c) . . . If the respondent fails to file any answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without notice to the respondent, find the specification to be true and enter such order as may be appropriate.

The backpay specification, issued and served on the Respondent on or about January 29, 1982, specifically states that the Respondent shall, within 15 days after the date of the specification, file with the Regional Director for Region 2 an answer to the specification and that, if the answer fails to deny the allegations of the specification in the manner required under the Board's Rules and Regulations and the failure to do so is not adequately explained, such allegations shall be deemed to be admitted to be true and the Respondent shall be precluded from introducing any evidence controverting them.

On February 3, 1982, the Respondent filed a petition in the United States Bankruptcy Court for the Southern District of New York.² By letter dated February 16, 1982, the Respondent, Fenetrol Window, and their counsel were informed of their default in failing to submit an answer to the backpay specification, and that counsel for the General Counsel intended to move for summary judgment in accordance with the specification if an answer was not received by the close of business on February 26, 1982. Additionally, by letter dated April 8, 1982, Ira S. Greene,

² Docket No. 82 B 10218.

Esquire, the interim trustee appointed by the United States Bankruptcy Court for the Southern District of New York, received a copy of the backpay specification and was invited to answer the specification. No written response to said letters has ever been received.

On May 21, 1982, the date of the Motion for Summary Judgment, the Respondent had filed no answer and to date has not indicated that it intends to file an answer. The Respondent also failed to file a response to the Notice To Show Cause, and, therefore, the allegations of the Motion for Summary Judgment stand uncontroverted. As the Respondent, Fenetrol Window, their counsel, and the interim trustee have not filed an answer to the specification and have not offered any explanation for their failure to do so, in accordance with the rules set forth above, the allegations of the specification are deemed to be true and are so found by the Board without the taking of evidence in support of the said allegations.

Accordingly, we grant the General Counsel's Motion for Summary Judgment, and conclude that Fenetrol Window Manufacturers, Inc., is the alter ego of or successor to the Respondent and that the net backpay due the discriminatees, Eddie Ortiz, Winseth Greene, Percival Huggins, Juan Feliciano, David Huertas, Richard Brice, Hector Delgado, William Dove, A. Perez, Richard Bryant, Adalberto Cardo, and Santiago Perez, is as stated in the computations of the specification. Accordingly, we shall order the Respondent and Fenetrol Window Manufacturers, Inc., to

pay those amounts to the discriminatees and to make a valid offer of reinstatement to Eddie Ortiz.³

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, f/k/a Fenetrol, Inc., a subsidiary of Yonkers Plate Glass Co., Bronx, New York, and Fenetrol Window Manufacturers, Inc., Bronx, New York, their officers, agents, successors, and assigns, shall make whole the following discriminatees by the payment to them of the amount opposite their respective names, plus interest thereon computed in the manner prescribed in Florida Steel Corporation, 231 NLRB 651 (1977),⁴ until payment of all backpay is made as provided for in F. W. Woolworth Company, 90 NLRB 289 (1950), less tax withholding required by Federal and state laws:

³ Respondent made a valid offer of reinstatement to Winseth Greene on November 23, 1979.

⁴ See, generally, Isis Plumbing & Heating Co., 138 NLRB 716 (1962).

In accordance with his dissent in Olympic Medical Corporation, 250 NLRB 146 (1980), Member Jenkins would award interest on the backpay due based on the formula set forth therein.

Eddie Ortiz	\$16,548
Winseth Green	1,638
Percival Huggins	1,260
Juan Feliciano	1,260
David Huertas	1,260
Richard Brice	1,260
Hector Delgado	1,260
William Dove	1,260
A. Perez	1,260
Richard Bryant	1,260
Adalberto Cardo	1,260
Santiago Perez	1,260

IT IS FURTHER ORDERED that the Respondent and Fenetrol Window Manufacturers, Inc., shall offer Eddie Ortiz immediate and full reinstatement to his former job or, if his job no longer exists, to a substantially equivalent position, without prejudice to his seniority or other rights and privileges, and make him whole, with interest, for any backpay or other benefits due him, in addition to the amount specified above, until a valid offer of reinstatement has been made.

Dated, Washington, D.C.

August 24, 1982

John H. Fanning, Member

Howard Jenkins, Jr., Member

Don A. Zimmerman, Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD